

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

**November 5, 2013**

Diane M. Fremgen  
Clerk of Court of Appeals

**NOTICE**

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

**Appeal No. 2012AP2623  
STATE OF WISCONSIN**

**Cir. Ct. No. 2002CF960**

**IN COURT OF APPEALS  
DISTRICT III**

---

**STATE OF WISCONSIN,**  
  
**PLAINTIFF-RESPONDENT,**  
  
**V.**  
  
**ISRAEL ROBLES-FIGUEROA,**  
  
**DEFENDANT-APPELLANT.**

---

APPEAL from an order of the circuit court for Outagamie County:  
DEE R. DYER, Judge. *Affirmed.*

Before Hoover, P.J., Mangerson and Stark, JJ.

¶1 PER CURIAM. Israel Robles-Figueroa appeals an order denying his WIS. STAT. § 974.06 (2011-12), postconviction motion without a hearing. Robles-Figueroa had a previous postconviction motion and appeal, and attempts to avoid the procedural bar against successive postconviction motions by alleging ineffective assistance of postconviction counsel. He contends his postconviction

counsel was ineffective for failing to raise ineffective assistance of trial counsel based on trial counsel's failure to seek suppression of Robles-Figueroa's statements to police. The circuit court denied the motion, concluding the record conclusively demonstrates that Robles-Figueroa is not entitled to relief. Because the postconviction motion was facially insufficient, presenting only conclusory allegations of ineffective assistance of counsel and the record shows he was not entitled to relief, we affirm the order.

¶2 The circuit court may deny a postconviction motion without a hearing if the motion fails to raise questions of fact or presents only conclusory allegations, or if the record conclusively demonstrates that the defendant is not entitled to relief. *State v. Allen*, 2004 WI 106, ¶12, 274 Wis. 2d 568, 682 N.W.2d 433. Because Robles-Figueroa had a previous postconviction motion and appeal, his motion must establish "sufficient reason" for his failure to have raised the issues in his earlier postconviction motion and appeal. See *State v. Escalona-Naranjo*, 185 Wis. 2d 168, 181, 517 N.W.2d 157 (1994). It is not enough to simply identify an issue postconviction counsel did not raise and claim ineffective assistance, thereby allowing sequential postconviction motions. Rather, the motion must show that the issues raised in the present motion are "clearly stronger" than the issues raised by counsel in the previous postconviction motion and appeal. *State v. Starks*, 2013 WI 69, ¶60, 349 Wis. 2d 274, 833 N.W.2d 146. To require less would render meaningless the prohibition against sequential postconviction motions set out in *Escalona-Naranjo*.

¶3 The trial court properly denied Robles-Figueroa's postconviction motion without a hearing because the motion does not adequately establish grounds for relief. The motion is based entirely on *Missouri v. Seibert*, 542 U.S. 600 (2004), in which the Court concluded police could not deliberately use a

two-step interrogation process in which *Miranda*<sup>1</sup> warnings are intentionally withheld until after a suspect makes incriminating statements. Robles-Figueroa's motion recites that he was interviewed by police and was only given his *Miranda* warnings after he made inconsistent statements. In *Seibert*, *Miranda* warnings were required from initiation of the interview because *Seibert* was under arrest. *Id.* at 601. Robles-Figueroa's motion does not establish that he was in custody at the time he made the inconsistent statements. Therefore, the motion, on its face, is insufficient to establish a *Seibert* violation or ineffective assistance of counsel for failing to raise that issue. The motion does not allege sufficient specific facts to establish that the suppression issue was clearly stronger than the issues raised in the prior postconviction motion and appeal.

¶4 The record conclusively shows Robles-Figueroa is not entitled to relief. The trial court ruled that he could have terminated his discussion with the police officer any time he wanted to. The court concluded the interview was nonthreatening, noncustodial and voluntary. On the basis of those findings, any claim that the police violated the rule set out in *Seibert* would fail because *Seibert* applies only to interrogations of a defendant in custody. See *United States v. Thompson*, 496 F.3d 807, 811 (7th Cir. 2007).

¶5 In addition, the motion did not address ineffective assistance of postconviction counsel. That issue is raised for the first time on appeal. Therefore the motion was not sufficient to establish a basis for allowing sequential postconviction motions. The conclusory allegation that postconviction counsel

---

<sup>1</sup> *Miranda v. Arizona*, 384 U.S. 436 (1966).

“unreasonably failed” to raise the issue and the characterization of counsel’s decisions as “irrational” and “prejudicial” do not cover the necessary “who, what, when, where, why and how” details required in a postconviction motion. ***State v. Valliette***, 2011 WI 79, ¶59, 336 Wis. 2d 358, 805 N.W.2d 334.

*By the Court.*—Order affirmed.

This opinion will not be published. See WIS. STAT. RULE 809.23(1)(b)5. (2011-12).

